

### Litigators of the Week: Latham Beats Back Antitrust Challenge for Swimming's International Governing Body



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Courtesy photos

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January 13, 2023

The emails would make most defense lawyers cringe.

The Fédération Internationale de Natation, or FINA, faced claims it leveraged its position as the global governing body for aquatic sports to prevent an upstart professional swim league, the International Swimming League, from partnering with national federations and pulling in elite swimmers.

In particular, the plaintiffs pointed to a scuttled event in Turin, Italy.

“The hammer is about to come down on the Torino event,” wrote one FINA official in an email. After the Italian federation backed out of the proposed event, another wrote “which Federation will step forward in the future to host ISL meets? NONE!”

Despite the problematic emails, this week’s Am Law Litigation Daily Litigators of the Week are **Latham & Watkins** partners **Chris Yates** and **Aaron Chiu** convinced U.S. District Judge Jacqueline Scott Corley in San Francisco to side with FINA on summary judgment this week.

“The court acknowledges the record is replete with evidence of FINA’s concern about competition from ISL. But, so what?” Corley wrote. “The antitrust laws do not require one competitor to help another compete with it; instead, they prohibit only unreasonable restraints of trade.”

#### Lit Daily: Who was your client and what was at stake?

Chris Yates: Our client is World Aquatics, formerly, the Fédération Internationale de Natation (FINA). Based in Lausanne, Switzerland, World Aquatics is the international federation recognized by the International Olympic Committee responsible for administering Olympic and international competition in aquatic sports, and with promoting the development of swimming, water polo, high diving, synchronized swimming, and open water and masters swimming worldwide. World Aquatics is tasked with administering international competitions and maintaining world standings and records for these disciplines, including at the Olympic Games.

As with most antitrust suits, plaintiffs sought significant damages, which would have been trebled had they been successful. So, World Aquatics, a non-profit, was facing potential exposure of more than nine figures. As importantly, the plaintiffs were trying to use U.S. antitrust laws to challenge the governing rules and structure of World Aquatics with respect to how it administers swimming globally, and at the Olympic level. This was unprecedented for a number of reasons—including that plaintiffs were attempting to have a U.S. court determine whether and how World Aquatics could govern and administer rules

affecting 208 other national federations worldwide. The plaintiffs were effectively claiming that because the Olympic Games and World Aquatics' international competitions are really the only significant swimming competitions out there, World Aquatics' role as the arbiter of those competitions and the World Aquatics rules that govern its own member federations give it the monopoly power to foreclose anyone who wants to start a top-tier international swimming competition. This was never true, as we ultimately convinced the court, as the plaintiff in this case—International Swimming League (ISL) was in fact able to launch its own independent professional swimming league without either the support of World Aquatics or any of its member federations.

This case was very closely watched—both in the U.S. and abroad—particularly given the increasing scrutiny by both private claimants and antitrust enforcers worldwide on the workings and governance of sports leagues and governing bodies. This pair of suits is the first case that I'm aware of where a challenge to the rules and the governance of an international sports federation has been decided on the merits. We're grateful that the court ultimately recognized the rules that ISL challenged as unlawful were necessary and vital to World Aquatics' function as the recognized international governing body for the sport of swimming, and that it is not anticompetitive for World Aquatics to require third parties looking to work with World Aquatics or its own member federations to sponsor or stage international competitions comply with its rules. The judgment correctly preserves the ability of sports governing bodies to maintain and enforce rules and regulations necessary to administer and promote their respective sports.

#### **How did this matter come to the firm?**

Aaron Chiu: Latham has a stellar sports and entertainment practice with a long history of advising and working on matters for sports governing bodies and also relating to international and Olympic sports. When World Aquatics was first sued, Latham was immediately recommended by World Aquatics' long-time Swiss counsel.

#### **Who was on your team and how did you divide the work?**

Yates: In addition to myself and Aaron, we were fortunate to have my mentor and partner **Dan Wall** on the team. Dan is a titan of the antitrust bar and one of the best strategic minds you'll find, in addition to being integral to the success and growth of Latham's global antitrust practice over the past 20 years. We had a stellar team of associates led by **Jack Siddoway** and our former associate **Colleen Heyler**, which included **Becky McMahon**, **Robbie Hemstreet**, **Christie Greeley**, **Kevin Wu** and **Tim Snyder**. And of course, crucial to our success is our senior paralegal **Andrea Setterholm** and litigation support specialist **Linda Tam**.

Dan, Aaron and I have worked together for years and divided up the fact and expert depositions between us. And with such an outstanding group of associates on our team, we also were able to charge them with driving a lot of the briefing throughout the case and handling several depositions. I had two trials in the first half of 2022, so Dan took on the class certification argument and knocked out the swimmer plaintiffs' damages class bid. Dan was then in trial in Boston in the run-up to the summary judgment argument, and so I argued the summary judgment motion while Aaron was ready to argue the *Daubert* challenges to plaintiffs' experts.

**Here we're talking about an upstart professional swimming league backed by a Ukrainian energy sector magnate and the sport's international body based in Switzerland. You had to have some pretty significant jurisdictional fights early on. Why did so much of this play out in federal court in San Francisco?**

Chiu: When we first took this case, our universal reaction was similar—how can a U.S. court, in San Francisco, have jurisdiction over a lawsuit spearheaded by a Swiss-based swim league, founded and funded by a Ukrainian billionaire, against World Aquatics, another Swiss-domiciled organization, over a canceled swimming competition that was supposed to happen in Turin, Italy?

We spent more than a year fighting jurisdiction and unfortunately, lost that battle after a protracted period of jurisdictional discovery. Ultimately, the court found that because ISL at one point contemplated hosting a swimming competition in Las Vegas, and World

Aquatics was aware ISL had engaged in discussions about that possible event with USA Swimming (the U.S. national federation)—that was enough of a U.S. nexus for the case to remain in a U.S. court.

**The plaintiffs wielded some internal FINA emails saying “which Federation will step forward in the future to host ISL meets? NONE!” and “The hammer is about to come down on the Torino event.” What’s your reaction as an antitrust defense lawyer when you run across internal communications like that in discovery?**

Yates: Not ideal. But, look, most hotly contested antitrust cases involve emails or documents that likely make opposing counsel’s mouth water. At the end of the day, however, plaintiffs still had to prove the rules and the conduct by World Aquatics they were challenging actually had anticompetitive effects. And they couldn’t here. Perhaps the court put it best: “The Court acknowledges the record is replete with evidence of FINA’s concern about competition from ISL. But, so what? The antitrust laws do not require one competitor to help another compete with it; instead, they only prohibit unreasonable restraints of trade.”

**Your partner Dan Wall, a real brand name in the antitrust world, deposed ISL’s founder and managing director. How did those depositions contribute to your defense win here?**

Yates: Dan’s deposition was masterful and really set the stage for us to challenge ISL’s market definition. Market definition is always a key battle in antitrust cases and Dan was able to use ISL’s own marketing materials to clearly show that ISL competes with other sports and entertainment properties for sponsors, broadcasters, and fans.

**What can other governing bodies or established leagues facing competition from newcomers take from your client’s experience here?**

Chiu: This case, coupled with developments in disputes in Europe, make clear that sports governing bodies aren’t required to work with new leagues and can focus on things like maintaining a coherent calendar of events and rules that ensure a level playing field for all athletes.

**What will you remember most about this matter?**

Yates: The seamless collaboration among the partner team, which is a hallmark of Latham’s antitrust practice that we truly live and breathe, and especially critical in antitrust cases given their size and the number of moving parts. Aaron and I were also really pleased to get to bring in multiple junior associates and give them early deposition and other stand-up experience, which is critical to their professional development as the next generation of litigation stars. Part of that teamwork resulted in another standout for me: the admissions obtained from the depositions of the swimmer plaintiffs featured in our summary judgment filings and helped set the stage for our victory.

Chiu: The fortitude and the persistent dedication of our entire team throughout the case, which had various twists and turns up to this point, as well as the fun experience of getting to know the individuals involved with and learn more about the world of international and Olympic swimming. Like Chris, I’m also so proud of the various associates on the team who stepped up to the opportunities they had and delivered, whether it was in discovery battles, depositions, or briefing—all of which contributed to the result.